

EASTERN DIVISION

Summary Judgment Motion

Class Action

Case No.: 07 C 6592

Judge Blanche M. Manning

Magistrate Judge Martin C. Ashman

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNT I

Plaintiffs MICHELLE COX and EVARISTO and ALICIA CALZADA, by their

attorneys, Kenneth Maurice DucDuong and Gregory Andrew Zbylut, move this Court to enter summary judgment in Plaintiffs' favor, pursuant to Rule 56 of the Federal Rules of Civil

Procedure, for the relief prayed for in the Complaint and the claim alleged in Count I of the

Complaint on the ground that there is no genuine issue as to any material facts, and Plaintiffs are entitled to judgment as a matter of law. Plaintiffs submitted their memorandum of law in support

of this Motion, which is attached herein and incorporated as fully set forth herein. In support of

this motion, Plaintiffs state as follows:

1. That Plaintiffs filed the instant action on November 21, 2007 alleging that Defendants violated various provisions of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

2. That Plaintiffs' Count I—debt validation notice under § 1692g—of their Complaint was based solely on the collection letters sent by Defendants.

3. That on January 31, 2008 Defendants answered Plaintiffs' Complaint admitting that it had sent the collection letters alleged in the Complaint on or about September 14, 2007 to Plaintiff Cox.
4. That Defendants also sent to Plaintiffs Evaristo and Alicia Calzada on or about August 17, 2007 a collection letter that is substantially similar in form and content to the letter sent to Plaintiff Cox.
5. That on March 10, 2008 Defendants answered Plaintiffs' interrogatories admitting that they had sent approximately 1,340 such letters within the twelve months period prior to the date of filing of the instant action.
6. That on January 23, 2008 Plaintiffs, through their counsel, sent a letter to Defendants' counsel explaining in detail the merits of Plaintiffs' case.
7. That on February 22, 2008 Plaintiffs, through their counsel, sent a memorandum of law to Defendants' counsel with regard to Plaintiffs' Count I and requested a timely response.
8. That at various times and continuing to the present time, Plaintiffs, through their counsel, requested and Defendants' counsel failed to provide Plaintiffs a timely response or failed to answer Plaintiffs' request while repeatedly stated that it was simply "premature" with picayune explanation.
9. That there is no dispute of material facts as to the form and content of the letters alleged in Plaintiffs' complaint.
10. That the letters sent by Defendants violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* as a matter of law.
11. That in the interest of judicial efficacy and administration in resolving the instant dispute, Plaintiffs request that this Court render a judgment both as to class certification and merits at the

same time.

12. That a judgment, if granted, for this Motion would resolve Plaintiffs' entire dispute with Defendants.

WHEREFORE, Plaintiffs respectfully request that this Court certify the instant action as a class action and grant a judgment in favor of Plaintiffs, and against Defendants, in the above-titled action.

Dated: March 24, 2008

Respectfully submitted,

s/ Kenneth M. DucDuong

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